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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,768	12/28/2001	Gee Sung Chae	2658-0281P	4297
2292	7590	08/18/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			RICHARDS, N DREW	
			ART UNIT	PAPER NUMBER
			2815	

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/028,768

Applicant(s)

CHAE, GEE SUNG

Examiner

N. Drew Richards

Art Unit

2815

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-8, 21-26.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See continuation sheet

TOM THOMAS
SUPERVISOR EXAMINER
TECHNICAL 300

Continuation of 2. NOTE: Each independent claim, namely claims 1, 5 and 23, include a newly presented limitation of the first metal layer being patterned by dry etching using the second metal layer as a mask so that etched side-walls of the first metal layer and the second metal layer are substantially aligned. This limitation is a newly presented limitation that requires further search and consideration.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant has argued that the Final Rejection was premature because it introduced a new ground of objection. Applicant argues that this new ground of objection is tantamount to a rejection under 35 USC 112, second paragraph and thus the rejection should not have been final. This is not persuasive. The claim in issue, claim 5 is believed to be definite and thus was objected to, not rejected. Any amendment to correct the deficiencies outlined in the objection could have been made without affecting the scope of the invention or touching on the merits of the claim. Thus, the finality is considered proper and maintained..

With regard to the art rejections of the claims applicant presents arguments traversing the use of applicant's "conventional" figures 2, 4A and 4B. Applicant argues that the examiner has not met the burden of establishing a prima facie case that the figures are prior art. These figures have been treated as admitted prior art. The figures are labeled "conventional" and are discussed in the "background of the invention" section of the application. Labeling the figures as "conventional" and discussing them in the "background" is considered sufficient evidence that these figures are prior art. In support of this we need look no further than the definition of "conventional" and "background". According to Webster's Collegiate Dictionary, tenth edition, "conventional" means "2 a: according with, sanctioned by, or based on convention; b: lacking originality or individuality; c: ordinary, commonplace; 3 b: of traditional design." "Background" is defined as "b (1): the circumstances or events antecedent to a phenomenon or development." Thus, labeling the figure as "conventional" and discussing the figures in the "background" sufficient evidence has been presented that the figures are indeed prior art to the applicant's invention and the examiner's initial burden has been met.

Continuation of 10. Other: If applicant timely presents an amendment solely directed to correcting the objections of claim 5, such amendment will be entered as a matter of form to reduce or simplify the issues for appeal.